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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,645	03/20/2001	William Robert Collett	KK-140-R &D	1141

117 7590 05/24/2002

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EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

3

DATE MAILED: 05/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

T.P-3

Office Action Summary	Application No.	Applicant(s)	
	09/812,645	COLLETT ET AL.	
	Examiner	Art Unit	
	Dionne A. Walls	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-6, 18, and 20-22 rejected under 35 U.S.C. 103(a) as being unpatentable over McCutcheon (US. Pat. No. 6,321,757).

McCutcheon discloses all that is recited in the claims (Note: "container 11" corresponds to the claimed "crush-proof box"; "pack of cigarettes 36" corresponds to the claimed "plurality of cigarettes"; tubular member 20" corresponds to the claimed "cigarette saver"; col. 3, line 65 – col. 4, line 65; see figs.) except it may not explicitly state that the cigarette package comprises a "crush-proof" box. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the cigarette pack of McCutcheon so that it was crush-proof in order to preserve the integrity of the smoking articles contained therein for the benefit of the end user.

3. Claims 1-9 and 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740.

JP 6-70740 discloses all that is recited in the claims (Note: "tobacco housing part 13" corresponds to the claimed "crush-proof box"; "cigarettes 15" corresponds to the claimed "plurality of cigarettes"; "fire extinguishing part 14" corresponds to the claimed

"cigarette saver"; As evident from fig. 6, the length of the channel does not extend through the length of the fire extinguishing part, the end of the channel is tapered, and the channel comprises a guide portion 41; As evident from fig. 3, the "fire extinguishing part 14" is rectangular; see figures and attached English abstract) except it may not explicitly state that the cigarette package comprises a "crush-proof" box. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the cigarette pack of JP 6-70740 so that it was crush-proof in order to preserve the integrity of the smoking articles contained therein for the benefit of the end user.

Regarding claims 3, 13, and 19, while JP 6-70740 may not disclose that the opening to the channel is elliptical, this limitation is not deemed to add any patentable distinction from the reference because it would have been obvious to one having ordinary skill in the art at the time of the invention to have constructed the opening in an elliptical shape for aesthetic reasons or to allow greater, and hence easier, access of the lit cigarette into the extinguishing channel.

4. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 or McCutcheon (US. Pat. No. 6,321,757) in view of Gilbert et al (US. Pat. No. 4,886,076).

While neither the JP 6-70740 or McCutcheon references may state that the cigarette saver disclosed is constructed of plastic or metal, Gilbert et al discloses a cigarette snuffer and teaches that such a snuffer can be formed of a molded plastic material or metal (col. 1, line 53). Therefore, it would have been obvious to one having

ordinary skill in the art at the time of the invention to have fabricated the cigarette saver of JP 6-70740 out of either plastic or metal because either is a known material of construction for cigarette extinguishers as evidenced by Gilbert et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink, appearing to read "Dionne A. Walls". The signature is stylized with a large, looped initial "D" and a trailing flourish.

Dionne A. Walls
May 19, 2002